



ANNO VICESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1979

No. 43 of 1979

An Act to amend the Community Welfare Act, 1972-1976.

[Assented to 15th March, 1979]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Community Welfare Act Amendment Act, 1979".

(2) The Community Welfare Act, 1972-1976, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Community Welfare Act, 1972-1979".

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Amendment of
principal Act,
s. 4—
Arrangement.

3. Section 4 of the principal Act is amended—

(a) by striking out the passage "*Reception of a child into the Care and Control of the Minister*" and inserting in lieu thereof the passage "*Placing a Child under the Guardianship of the Minister*";

(b) by striking out the item:

Subdivision 2—Provisions relating to children under the care and control of the Minister;

and

(c) by striking out the passage "*Assessment Centres*" and inserting in lieu thereof the passage "*Assessment Panels*".

Amendment of
principal Act,
s. 5—
Transitional
provisions.

4. Section 5 of the principal Act is amended by inserting after subsection (15) the following subsection:—

(16) Where a child was, immediately prior to the commencement of the Community Welfare Act Amendment Act, 1979, under the care and control of the Minister pursuant to Part IV of this Act, he shall, upon the commencement of that amending Act, be deemed to be under the guardianship of the Minister pursuant to this Act.

5. Section 6 of the principal Act is amended—

Amendment of
principal Act,
s. 6—
Interpretation.

- (a) by striking out from subsection (1) the definition of “assessment centre” and inserting in lieu thereof the following definition:—

“assessment panel” means an assessment panel constituted by the Director-General under Part IV of this Act;

- (b) by striking out from subsection (1) from the definition of “child” the passage “and includes any person above that age who is under the care and control of the Minister”;

- (c) by inserting in subsection (1) after the definition of “child care centre” the following definition:—

“Children’s Court” means the Children’s Court of South Australia established under the Children’s Protection and Young Offenders Act, 1979;

- (d) by striking out from subsection (1) the definition of “child under the care and control of the Minister”;

- (e) by striking out from subsection (1) the definition of “guardian” and inserting in lieu thereof the following definition:—

“guardian”, in relation to a child, means a parent of the child and any person (other than the Minister) who is the legal guardian of the child, or who has the immediate custody and control of the child;

- (f) by striking out from subsection (1) the definitions of “juvenile court” and “Juvenile Courts Act”;

- (g) by striking out from subsection (1) the definition of “neglected child”; and

- (h) by striking out from subsection (1) the definition of “uncontrolled child”.

6. Section 38 of the principal Act is amended—

Amendment of
principal Act,
s. 38—
General powers
of Minister and
Department.

- (a) by striking out from paragraph (b) the passage “, either upon a voluntary basis, or in accordance with the Juvenile Courts Act”; and

- (b) by striking out from paragraph (c) the passage “where they are under the care and control of the Minister, or in such other circumstances” and inserting in lieu thereof the passage “in such circumstances”.

7. The heading preceding section 39 of the principal Act is amended by striking out the passage “*Reception of a Child into the Care and Control of the Minister*” and inserting in lieu thereof the passage “*Placing a Child under the Guardianship of the Minister*”.

Amendment of
heading to
s. 39 of
principal Act.

8. Section 39 of the principal Act is amended—

Amendment of
principal Act,
s. 39—
Application for
child to be
placed under
the guardian-
ship of the
Minister.

- (a) by striking out from subsection (1) the passage “A parent, guardian, or person having the custody,” and inserting in lieu thereof the passage “A guardian”;

- (b) by striking out from subsection (1) the passage “care and control” and inserting in lieu thereof the word “guardianship”;

and

- (c) by striking out subsection (2) and inserting in lieu thereof the following subsection:—

(2) Where the Minister is satisfied that the child the subject of an application is in need of care by reason that—

(a) a guardian of the child has maltreated or neglected the child to the extent that the child has suffered, or is likely to suffer, physical or mental injury, or to the extent that his physical, mental or emotional development is in jeopardy;

(b) the guardians of the child are unable or unwilling to exercise adequate supervision and control over the child;

or

(c) the guardians of the child are unable or unwilling to maintain the child,

the Minister may, by order in writing, place the child under the guardianship of the Minister for such period of time as the Minister thinks fit, but not extending beyond the time at which the child attains the age of eighteen years.

Repeal of
s. 40 of
principal Act
and enactment
of section in
its place.

9. Section 40 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Temporary
guardianship
of a child.

40. (1) The Minister, upon receipt of a request by a guardian of a child, or by a child of or above the age of fifteen years, may place the child under the guardianship of the Minister for such period of time, not exceeding three months, as the Minister thinks fit, where the Minister is of the opinion that it is in the interests of the child to do so.

(2) The Minister shall not place a child of or above the age of fifteen years under the guardianship of the Minister pursuant to a request of a guardian unless the child consents thereto.

(3) A child placed under the guardianship of the Minister pursuant to this section shall not be detained in a home for any period in excess of three weeks, except with the approval of the person upon whose application the child was placed under guardianship.

(4) The child shall be discharged from the guardianship of the Minister—

(a) upon the expiration of the period of guardianship;

or

(b) at any time prior to the expiration of that period if—

(i) the guardian upon whose application the child was placed under the guardianship of the Minister applies for the discharge of the child;

(ii) the child, if he is of or above the age of fifteen years, applies to be discharged;

or

(iii) the Minister directs that the child be discharged.

10. Section 41 of the principal Act is amended—

Amendment of principal Act, s. 41—
Guardianship of children from other States.

- (a) by striking out from subsection (1) the passage “receive the child into his care and control” and inserting in lieu thereof the passage “place the child under the guardianship of the Minister”;
- (b) by striking out from subsection (2) the passage “care or control” and inserting in lieu thereof the word “guardianship”;
- (c) by striking out from subsection (2) the passage “care and control” and inserting in lieu thereof the word “guardianship”;
- (d) by striking out from subsection (3) the passage “received into the care and control” and inserting in lieu thereof the passage “placed under the guardianship”;
- (e) by striking out from subsection (4) the passage “care and control” firstly occurring and inserting in lieu thereof the word “guardianship”;

and

- (f) by striking out from subsection (4) the passage “received into the care and control” and inserting in lieu thereof the passage “placed under the guardianship”.

11. The heading preceding section 42 of the principal Act is repealed.

Repeal of heading to s. 42 of principal Act.

12. Section 42 of the principal Act is amended by striking out from paragraph (a) the passage “care, guidance and (where necessary) correction,” and inserting in lieu thereof the passage “care and guidance”.

Amendment of principal Act, s. 42—
Principles upon which powers are to be exercised.

13. Section 43 of the principal Act is amended by striking out the passage “care and control” and inserting in lieu thereof the word “guardianship”.

Amendment of principal Act, s. 43—
Minister is lawful guardian

14. Section 44 of the principal Act is amended—

Amendment of principal Act, s. 44—
Powers of Director-General.

- (a) by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) Subject to this Act, the Director-General may from time to time make provision for the care of a child who is under the guardianship of the Minister pursuant to this Act in any of the following ways:—

- (a) he may place the child, or permit the child to remain, in the care of any guardian or relative of the child;
- (b) he may place the child in the care of an approved foster parent, or any other suitable person;
- (c) he may place the child in any home established or licensed under this Act, or in any other suitable place, and make such directions as to the care and keeping of the child in that home as he thinks fit;
- (d) he may, if it is necessary or desirable for the sake of the physical or mental health of the child, place him in any hospital;

or

(e) he may make such other provision for the care of the child as the circumstances of the case may require.;

and

(b) by striking out from subsection (3) the passage "care and control" and inserting in lieu thereof the word "guardianship".

Amendment of
principal Act,
s. 45—
Removal of
child from
any place.

15. Section 45 of the principal Act is amended—

(a) by striking out from subsection (1) the passage "care and control" and inserting in lieu thereof the word "guardianship";

(b) by striking out from subsection (1) the passage "apprehend the child" and inserting in lieu thereof the passage "remove the child from any place";

and

(c) by striking out from subsection (1) the word "apprehending" and inserting in lieu thereof the word "removing".

Amendment of
principal Act,
s. 46—
Keeping of
child in home.

16. Section 46 of the principal Act is amended—

(a) by inserting in subsection (1) after the word "child" the passage "who is under the guardianship of the Minister pursuant to this Act";

(b) by striking out from subsection (1) the word "detained" and inserting in lieu thereof the word "kept";

(c) by striking out from subsection (2) the word "detained" and inserting in lieu thereof the word "kept";

and

(d) by striking out from subsection (2) the passage "care and control" and inserting in lieu thereof the word "guardianship".

Amendment of
principal Act,
s. 47—
Review Boards.

17. Section 47 of the principal Act is amended—

(a) by striking out from subsection (1) the passage "The Director-General" and inserting in lieu thereof the passage "The Minister";

(b) by striking out from subsection (1) the passage "care and control of the Minister" and inserting in lieu thereof the passage "guardianship of the Minister pursuant to this Act";

and

(c) by striking out from subsection (2) the passage "care and control", twice occurring, and inserting in lieu thereof, in each case, the word "guardianship".

Repeal of
s. 48 of
principal Act.

18. Section 48 of the principal Act is repealed.

Repeal of
s. 49 of
principal Act
and enactment
of section in
its place.

19. Section 49 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Discharge of
child from
guardianship
of Minister
and appeals.

49. (1) The Minister may order that a child who has been placed under the guardianship of the Minister pursuant to this Act be discharged from guardianship.

(2) A guardian of a child who has been placed under the guardianship of the Minister pursuant to this Act may apply to the Minister in the prescribed manner for an order that the child be discharged from guardianship.

(3) A child of or above the age of fifteen years may apply to the Minister in the prescribed manner for an order that he be discharged from guardianship.

(4) Where the Minister refuses an application that has been duly made under this section, the applicant may appeal in the prescribed manner to a Judge of the Children's Court against that refusal.

(5) In any appeal under this section the Children's Court shall not be bound by the rules of evidence, but may inform itself upon any matter in such manner as the Court thinks fit.

(6) Where an appeal has been instituted under this section, the Director-General shall furnish the Court with a report on the personal circumstances and social background of the child.

(7) Upon the hearing of an appeal under this section, the Court may order—

(a) that the appeal be dismissed;

or

(b) that the child be discharged from guardianship.

20. The heading preceding section 58 of the principal Act is amended by striking out the passage "*Assessment Centres*" and inserting in lieu thereof the passage "*Assessment Panels*".

Amendment of heading to s. 58 of principal Act.

21. Section 58 of the principal Act is amended by striking out from subsection (2) the passage "The Minister may establish such assessment centres" and inserting in lieu thereof the passage "The Director-General may constitute such assessment panels".

Amendment of principal Act, s. 58—
Establishment of homes, panels and centres.

22. Section 59 of the principal Act is amended by striking out the passage "assessment centre," twice occurring.

Amendment of principal Act, s. 59—
Management and control of homes and centres.

23. The following section is enacted and inserted in Subdivision 8 of Division II of Part IV of the principal Act before section 74 thereof:—

Enactment of s. 73a of principal Act.

73a. In this subdivision—

Interpretation.

"child to whom this section applies" means—

(a) a child who is under the guardianship of the Minister pursuant to this Act;

(b) a child who is under the guardianship of the Minister pursuant to Part III of the Children's Protection and Young Offenders Act, 1979;

and

(c) a person who is detained in a home, training centre or any other place pursuant to the Children's Protection and Young Offenders Act, 1979.

Amendment of
principal Act,
s. 74—
Assistance to
foster parents,
etc.

24. Section 74 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) The Director-General may grant to the foster parent, or any other person in charge, of—

(a) a child to whom this section applies;

or

(b) a child who is under the guardianship of the Director-General pursuant to the Adoption of Children Act, 1966-1978,

such financial or other assistance for the care and maintenance of the child as may be determined by the Minister.

Repeal of
s. 76 of
principal Act
and enactment
of section
in its place.

25. Section 76 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Unlawful
absence from
training
centre, etc.

76. Where a child to whom this section applies is absent without lawful excuse from any place in which he is being detained, or has been placed by the Director-General, an officer of the Department authorized for the purpose or a member of the police force may, without any warrant, apprehend the child, and for that purpose may enter or break into any premises and use such force as is reasonably necessary.

Amendment of
principal Act,
s. 77—
Unlawful taking
of child, etc.

26. Section 77 of the principal Act is amended by striking out paragraph (a) and inserting in lieu thereof the following paragraph:—

(a) induces a child to whom this section applies unlawfully to leave, or unlawfully takes such a child from, any place in which the child is being detained, or has been placed by the Director-General;

Amendment of
principal Act,
s. 78—
Unlawful
communication
with child, etc.

27. Section 78 of the principal Act is amended—

(a) by striking out paragraph (a);

and

(b) by striking out from paragraph (c) the passage “child under the care and control of the Minister” and inserting in lieu thereof the passage “child to whom this section applies”.

Amendment of
principal Act,
s. 79—
Power of entry.

28. Section 79 of the principal Act is amended by striking out from subsection (1) the passage “neglected or uncontrolled child” and inserting in lieu thereof the passage “child in need of care”.

Amendment of
principal Act,
s. 81—
Payment of
moneys to the
Director-
General.

29. Section 81 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “child under the care and control of the Minister” and inserting in lieu thereof the passage “child to whom this section applies”;

and

(b) by striking out from subsection (7) the passage “under the care and control of the Minister” and inserting in lieu thereof the passage “a child to whom this section applies”.

Repeal of
s. 82 of
principal Act.

30. Section 82 of the principal Act is repealed.

31. Section 98 of the principal Act is amended by striking out the passage "care and control of the Minister" and inserting in lieu thereof the passage "guardianship of the Minister pursuant to this Act or any other Act".
- Amendment of principal Act, s. 98—
Order of liability of near relatives for maintenance of child.
32. Section 99 of the principal Act is amended by striking out from subsection (2) the passage "care and control of the Minister" and inserting in lieu thereof the word "guardianship".
- Amendment of principal Act, s. 99—
Issue of summons for maintenance.
33. Section 123 of the principal Act is amended by striking out from paragraph (b) of subsection (2) the passage "care and control of the Minister" and inserting in lieu thereof the passage "guardianship of the Minister pursuant to this Act or any other Act".
- Amendment of principal Act, s. 123—
Effect of order.
34. Section 142 of the principal Act is amended by striking out from paragraph (e) the passage "care and control of the Minister" and inserting in lieu thereof the passage "guardianship of the Minister pursuant to this Act or any other Act".
- Amendment of principal Act, s. 142—
Evidentiary provision.
35. Section 236 of the principal Act is amended by striking out the passage "care and control of the Minister" and inserting in lieu thereof the passage "guardianship of the Minister pursuant to this Act or any other Act, or a child who is being detained in a training centre or any other place pursuant to the Children's Protection and Young Offenders Act, 1979 (whether or not the child is on the premises of the training centre or other place at the time he committed the tort),".
- Amendment of principal Act, s. 236—
Limitation upon tortious liability.
36. Section 239 of the principal Act is amended by striking out subsection (4).
- Amendment of principal Act, s. 239—
Institution and conduct of proceedings.
37. Section 240 of the principal Act is amended by striking out from subsection (2) the passage "children's home or an assessment centre established or" and inserting in lieu thereof the passage "home established under this Act, or a children's home or child care centre".
- Amendment of principal Act, s. 240—
Evidentiary provision.
38. Section 241 of the principal Act is repealed.
- Repeal of s. 241 of principal Act.
39. Section 251 of the principal Act is amended—
- Amendment of principal Act, s. 251—
Regulations.
- (a) by striking out from paragraph (e) the passage "care and control of the Minister" and inserting in lieu thereof the passage "guardianship of the Minister pursuant to this Act or any other Act";
- (b) by inserting after paragraph (e) the following paragraph:—
- (e1) the treatment, education, discipline and control of children detained in training centres or other places pursuant to the Children's Protection and Young Offenders Act, 1979;;

(c) by striking out from paragraph (h) the passage “care and control of the Minister” and inserting in lieu thereof the passage “guardianship of the Minister pursuant to this Act or any other Act”;

and

(d) by striking out from paragraph (i) the passage “care and control of the Minister” and inserting in lieu thereof the passage “guardianship of the Minister pursuant to this Act or any other Act”.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor